

REMARKS

Reconsideration of the above-identified application in view of the amendments above and the remarks following is respectfully requested.

Claims 59, 69, 72, 93, 98-102 and 220 are allowed.

Claims 233-272 were previously added in the amendment filed April 17, 2008. By this amendment, applicant has added dependent claim 273. Support therefore may be found in original claim 11.

Additional Claim Material

Dependent claims 233-272 were previously presented. By this amendment claim 273 is added. As these claims are dependent on allowed claim 220 and are based on previously filed dependent claims, these claims should be allowable. No new matter has been added.

All issues raised by the Examiner have been dealt with. In view of the above amendments and the discussion above, Applicant submits that the claims are all in condition for allowance. A prompt Notice of Allowance is therefore respectfully requested.

Respectfully submitted,



Martin D. Moynihan
Registration No. 40,338

Date: August 11, 2008

Encls.:

- Additional Claim Transmittal Sheet
- Response to Non-Compliant Communication dated July 11, 2008



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Oren GLOBERMAN et al

Serial No.: 09/890,172

Filed: July 25, 2001

For: EXPANDABLE
INTERVERTEBRAL SPACER

Examiner: Paul B. Prebilio

Group Art Unit: 3738

Attorney Docket: 34982

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT TRANSMITTAL

Sir:

- (1) Applicant is a:
☒ small entity
☐ other than small entity

- (2) The fee for claims 37 C.F.R. §1.16(b)-(d) has been calculated as shown below:

For	Claims after Amendment	Highest Claims Previously Paid
Total Claims	52	186
Indep. Claims	11	17

Small Entity	
Rate	Fee
0 x \$ 25	\$ 0.00
0 x \$105	\$ 0.00
TOTAL:	\$ 0.00

OR
OR
OR

Other Than Small Entity	
Rate	Fee
XX x \$ 50	\$ 0.00
XX x \$210	\$ 0.00
TOTAL:	\$ 0.00

- (3) A response to the Office Action dated July 11, 2008 ☒ is filed herewith
☐ has been filed
- (4) There is no charge for the additional claims. However, should there be a charge, please charge the additional claim fee and any other amount required to Deposit Account No. 50-1407. A duplicate copy of this form is enclosed, if necessary.

Respectfully submitted,

Martin D. Moynihan

Martin D. Moynihan
Registration No. 40,338

Date: August 11, 2008



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	§	
	§	
Oren GLOBERMAN et al	§	
	§	
Serial No.: 09/890,172	§	
	§	
Filed: July 25, 2001	§	Group Art Unit: 3738
	§	
For: EXPANDABLE	§	
INTERVERTEBRAL SPACER	§	
	§	Attorney Docket: 34982
	§	(Previously: 2239)
Examiner: Paul B. Prebilio	§	

Mail Stop Amendment
Honorable Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO NON-COMPLIANT NOTIFICATION

Sir:

This is in response to the United States Patent and Trademark Notice of Non-Compliant Amendment dated July 11, 2008.

By said Notification, source material for added claim material was required. To note, page and line numbers are based on the published international application WO00/44319.

Claim 233 finds support on page 15, lines 15-17 which reads, "Preferably, said at least two axially displaced extensions comprises at least three extensions, which three extensions extend in at least three different directions from said tube."

Claim 234 finds support on page 12, lines 17-19, which reads, "Alternatively or additionally, said at least two axially displaced extensions comprises at least four extensions, which four extensions extend in at least four different directions from said tube."

Claims 235-237 find support on page 12, line 20-22, which reads, "In a preferred embodiment of the invention, said slits are straight. Alternatively or additionally, said slits are

curved. In a preferred embodiment of the invention, said slits are narrow."

Claims 238-242 find support on page 12, lines 23-31, which reads, "In a preferred embodiment of the invention, said slits have a non-trivial width for at least part of their length. In a preferred embodiment of the invention, said slits are substantially parallel to said tube axis. In a preferred embodiment of the invention, said slits are not parallel to said tube axis. In a preferred embodiment of the invention, said slits are arranged in pairs of same length. In a preferred embodiment of the invention, said slits are arranged in pairs of different lengths."

Claim 242 finds support on page 12, lines 32-33, which reads, "In a preferred embodiment of the invention, slits associated with one extension axially overlap slits associated with a second, axially displaced, extension."

Claim 243 finds support on page 13, lines 1-3, which reads, "In a preferred embodiment of the invention, said proximal end of said tube defines a proximal end-cap, which end-cap extends outside of a volume defined by the geometry of said extended extensions."

Claims 244 - 246 find support on page 13, lines 4-7, which reads, "In a preferred embodiment of the invention, said distal end of said tube defines a distal end-cap, which end-cap extends outside of a volume defined by the geometry of said extended extensions. Alternatively, at least one of said extensions is flush with said proximal end of said tube. Alternatively, at least one of said extensions is flush with said distal end of said tube."

Claims 247-248 find support on page 13, lines 8-10, which reads, "In a preferred embodiment of the invention, the spacer comprises at least one spur axially extending from said spacer, to engage tissue adjacent said spacer. Preferably, said at least one spur comprises at least two spurs axially extending from said spacer."

Claims 249-251 find support on page 13, lines 11-13, which reads, "In a preferred embodiment of the invention, the spacer comprises an inner bolt. Preferably, said inner bolt has a smooth exterior. Alternatively, said inner bolt has a threaded exterior. "

Claim 252 finds support in original claims 23 and 25.

Claim 253 finds support in original claims 120, 30, 31 and 32.

Claim 254 finds support in original claims 58 and 59.

Claim 255 finds support in original claim 69.

Claim 256 finds support in original claim 73.

Claim 257 finds support in original claim 71.

Claim 258 finds support in original claim 98.

Claim 259 finds support in original claim 99.

Claim 260 finds support in original claim 100.

Claim 261 finds support in original claim 101.

Claim 262 finds support in original claim 102.

Claim 263 finds support in original claim 103.

Claim 264 finds support in original claim 116.

Claim 265 finds support in original claim 117.

Claim 266 finds support in original claim 118.

Claim 267 finds support in original claim 73.

Claim 268 finds support in original claim 96.

Claim 269 finds support in original claim 93.

Claim 270 finds support in original claim 85.

Claim 271 finds support in original claim 83.

Claim 272 finds support in original claim 74.

Co-Pending Applications

As per the Examiner's request, below are listed co-pending patent applications. The other applications incorporate this application by reference, but are not otherwise directed to generally the same subject matter. All applications should be available to Examiner in IFW. The co-pending applications are:

11/638,349 filed on 14 December 2006;
10/182,352 filed on 17 March 2003;
11/042,546 filed on 24 January 2005; and
11/785,757 filed on 19 April 2007.

Respectfully submitted,



Martin D. Moynihan
Registration No. 40,338

Date: August 11, 2008

Encls.:

- Supplemental Response to the Office Action dated December 17, 2007